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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,760	05/23/2001	Gregg Henderson	98A16-US HEN	2331

25547 7590 03/03/2003

PATENT DEPARTMENT
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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/03/2003 //

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/856,760

Applicant(s)
Henderson et al

Examiner
Alton Pryor

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1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 20, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-20 is/are allowed.
- 6) ☒ Claim(s) 1-8, 21-24, 27, and 28 is/are rejected.
- 7) ☒ Claim(s) 25 and 26 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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Claim Rejections under 35 U.S.C. 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5,21,22,27 are rejected under 35 U.S.C. 102(b) as being anticipated by Baxter et al (Food Chemistry, 1979, vol. 4 no. 4, pp. 319-21). Baxter teaches a method wherein nootkatone is added to water (aqueous citric acid). Water is considered a wood building material as well as a substrate. See abstract. Although the prior art does not state that the treatment of water with nootkatone would repel or kill termites, it is inherent that water treatment with nootkatone would kill or repel termites.

Claims 1-4,7,8,28 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 61033129; 2/17/86. JP '129 teaches a method wherein bicyclovetivenol is used as a local anesthetic (applied to the body). The body is considered the substrate. See abstract. Although the prior art does not state that the treatment of the body with bicyclovetivenol would repel or kill termites, it is inherent that body treatment with bicyclovetivenol would kill or repel termites.

Claims 1-4,6,8,28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishimura et al (Koryo, 1982, vol. 135, pp. 89-95. Nishimura teaches a method wherein zizanol is added to ketones and acids. Ketone and acid are considered materials or substrates. See abstract. Although

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the prior art does not state that the zizanol mixture would repel or kill termites, it is inherent that zizanol mixture would kill or repel termites.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-5,8,21,22,27 are rejected under 35 U.S.C. 102(a) as being anticipated by Kashihara (WO 200027907; 5/18/02). Kashihara teaches a method wherein nootkatone is added to water or plastic. Water or plastic is considered a material as well as a substrate. See abstract. Although the prior art does not state that the treatment of water or plastic with nootkatone would repel or kill termites, it is inherent that water / plastic treatment with nootkatone would kill or repel termites.

Claim Rejections under 35 U.S.C. 103(a)

4. Claims 22,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baxter as applied to claims 1-5,21,22,27 above. Baxter teaches all that is recited in claims 22,24 except for the instant invention comprising the instant amounts of nootkatone. However, one having ordinary skill in the art would have been expected to determine the optimum amount of nootkatone. One would have been motivated to do this in order to make an invention with optimum odor control.

5. Claims 22,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashihara as applied to claims 1-5,8,21,22,27 above. Kashihara teaches all that is recited in claims 22,24 except for the instant invention comprising the instant amounts of nootkatone. However, one having ordinary skill in the art would have been expected to determine the optimum amount of

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nootkatone. One would have been motivated to do this in order to make an invention for optimum volume reduction of styrene foams.

Claim Objection / Allowable Subject Matter

Claims 25,26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the instant invention comprising zizanol or bicyclovetivenol plus a wood building material. Claims 9-20 are allowable. The prior art does not teach or suggest the instant invention comprising the instant compounds plus mulch, soil, and diatomaceous earth.

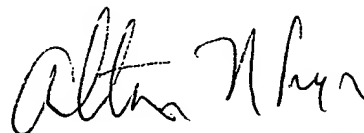
Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

**ALTON N. PRYOR
PRIMARY EXAMINER**

Primary Examiner, AU 1616

3/2/03